

REMARKS

Reconsideration of the application in light of the following remarks is respectfully requested.

Status of the Claims

Claims 13-15, 18-23 and 29-31 are pending. Claims 1-12, 16-17, 24-28 and 32 were canceled by previous amendment, without prejudice or disclaimer of the subject matter recited therein.

Rejections under 35 U.S.C. §103

Claims 13-15, 18-23 and 29-31 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,847,613 to Mimura et al. ("Mimura") in view of the Examiner's statement of what was known in the art at the time of the invention. Applicants respectfully traverse the rejection.

Mimura describes implementing monitoring of communication flows and collecting statistical data of a packet switched network. Mimura describes a packet switch 1 which includes a meter 5 and a MUX control 6. The meter 5 observes the incoming packets, and acquires/ retains statistical data on predetermined items for those incoming packets which meet conditions identified by a flow identifying unit 3. Packets not meeting the conditions are forwarded to their destination, but do not undergo monitoring and statistic collection. Mimura, column 6, lines 36-45, 59-65; Fig. 1. Under instruction by the MUX control 6, the statistical data is incorporated into the communication flow consisting of the packets to be delivered and sent as part of the flow. Mimura, column 7, lines 32-35. The statistical data acquired by the meter 5

includes time dependent information (e.g., average numbers of packets passed per unit time, relative time of the communication flow of observed packets begins and terminates, delay time). Mimura, column 7, lines 1-28. Mimura describes that the meter 5 detects the communication flow start and end times. Mimura, column 7, lines 21-26.

Independent claims 13 and 29 of the present application recite the aggregation of characteristic values “includes at least two of a mean one-way delay, a maximum one-way delay, a minimum one-way delay, a standard deviation of a one-way delay, a mean IP delay variation, a maximum IP delay variation, a standard deviation of an IP delay variation, a packet loss, and a packet throughput over a time interval” and “associating the characteristic values with a time of the combining.”

It is respectfully submitted that Mimura neither teaches nor suggests combining measured data into an aggregation of characteristic values, wherein the aggregation includes at least two of various enumerated parameters, nor associating the characteristic values with a time of the combining, as recited in amended independent claims 13 and 29. The Office Action acknowledges that Mimura “is silent [regarding] obtaining at least two of a mean one-way delay, a mean one-way path delay, and a maximum one-way delay as aggregation of characteristic values.” Detailed Action, page 3. The Office Action relies on assertions not supported by any concrete evidence in the record to formulate the rejection (see below). In contrast, Mimura, the only evidence of record, fails to describe the enumerated parameters of independent claims 13 and 29. Additionally, Mimura merely sends measured performance metrics as part of a network communication flow, and detects relative times at which the observed IP packet flow begins and

ends. *See* Mimura, column 7, lines 21-29 and 32-35. Mimura fails to describe associating a time of combining with the characteristic values, as recited in claims 13 and 29. Accordingly, a combination of Mimura and the Examiner's statement of what was known at the time of the invention, to the extent proper, could not render independent claims 13 and 29, nor their respective dependent claims, obvious.

Reconsideration and withdrawal of the rejection of claims 13-15, 18-23 and 29-31 under 35 U.S.C. § 103(a) as being unpatentable based on a combination of Mimura and the Examiner's statement is respectfully requested.

Statements of Well-Known Fact

Applicants respectfully traverse all contentions of well-known fact to the extent that they are maintained and respectfully request that the Examiner provide specific evidence to establish those assertions and/or contentions under 37 C.F.R. § 1.104(d)(2) or otherwise. In particular, it is respectfully requested that the Examiner provide an affidavit and/or that the Examiner provide published information concerning the assertions made in the Office Action regarding well-known facts. *See*, Detailed Action, item 5, last two paragraphs, page 3-4. This is because the rejections of the claims are apparently being based on assertions that draw on facts within the personal knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions. *See* M.P.E.P. § 2144.03(A).

CONCLUSION

In view of the foregoing it is believed that remaining claims 13-15, 18-23 and 29-31 are in condition for allowance and it is respectfully requested that the application be reconsidered and that all pending claims be allowed and the case passed to issue.

If there are any other issues remaining which the Examiner believes could be resolved through a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below.

The Commissioner is hereby authorized to charge any unpaid fees deemed required in connection with this submission, including any additional filing or application processing fees required under 37 C.F.R. §1.16 or 1.17, or to credit any overpayment, to Deposit Account No. 04-0100.

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Respectfully submitted,

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